



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Issued by the Department of Transportation on January 21, 1999

**NOTICE OF ACTION TAKEN -- DOCKET OST-97-2653**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of **Delta Air Lines, Inc. and China Southern Airlines Limited,** filed **6/26/97** and supplemented **1/6/99** in Docket **OST-97-2653 and Undocketed for:**

**XX** Exemption under 49 U.S.C. 40109 for Delta to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between Los Angeles, California, and Guangzhou, China, and to integrate this authority with its existing certificate and exemption authority, consistent with applicable international agreements. Delta intends to operate this service under a code-share/blocked space agreement with China Southern on flights operated by China Southern. Delta has requested the authority for a period of two years.**

**XX** Statement of Authorization under 14 CFR Part 212 for China Southern to:

**Display Delta's "DL" designator code on flights operated by China Southern between Los Angeles, California, and Guangzhou, China.**

Applicant rep: **Robert E. Cohn (202) 663-8060** DOT Analyst: **Gerald Caolo (202) 366-2406**

**DISPOSITION**

**XX** Granted (subject to conditions, see below)

The exemption authority granted was effective when taken: **January 21, 1999**, through **January 21, 2001**

The statement of authorization granted was effective when taken: **January 21, 1999**, and will remain in effect indefinitely, subject to the conditions listed below:

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

**XX** Authority granted is consistent with the aviation agreement between the United States and the People's Republic of China.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

**XX** Holder's Certificate of Public Convenience and Necessity

**XX** Standard Exemption Conditions (attached)

**Conditions:** The statement of authorization granted here to China Southern is subject to the following conditions:

(1) The statement of authorization will remain in effect as long as (i) Delta and China Southern continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(See Reverse Side)

(2) Delta and/or China Southern must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.<sup>1</sup>

(3) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(4) The authority granted here is specifically conditioned so that neither Delta nor China Southern shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

(5) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.<sup>2</sup>

The route integration authority granted Delta is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

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On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp).*

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<sup>1</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

<sup>2</sup> We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement to include any provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

## **APPENDIX**

### **U.S. Carrier** **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.